**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 535 OF 2006**

**IN**

**FIRST APPEAL NO. 1389 OF 2006**

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders | Court's or Judge's Orders |
|---|---|

Ms. Brenda D'souza i/by. M/s. M.P. Vashi and Associates for the plaintiffs.

N. Dinkar Rao for the respondents.

**CORAM: S.B. DESHMUKH, J.**
**DATE : AUGUST 19, 2006.**

**P.C. :**

1. Heard learned counsel for the respondents.

2. The applicant was the plaintiff in B.C.C. Suit No. 5235 of 1993. The trial court has dismissed the said suit directing the applicants/original plaintiff to hand

over vacant and peaceful possession of the suit flat. The trial court has also directed the original defendant no.3 to refund the entire amount to the plaintiff. The learned counsel for the respondent, submits, that cheque of Rs.3,24,410/- is handed over to the plaintiff by original defendant no.3.

3. Learned counsel for the applicant, submits, that though the cheque is received by the applicant it is not presented to the bank. The first appeal filed on behalf of the applicant is admitted by this court by the order passed on June 15, 2006.

4. Having considered the fact that first appeal is already admitted by this court, in my view, interim relief, staying the order passed by the trial court, directing the

plaintiff to hand over possession, can be stayed subject to conditions :

(a) that the plaintiff/applicant shall not alienate or part with the possession of the suit flat.

(b) the hearing of the first appeal be expedited.

5. The submission of the learned counsel regarding damages for use and occupation of the property is left open to be agitated and considered by this court at the time of hearing of the appeal.

6. In this view of the matter in the interest of justice, Civil Application is partly allowed. The judgment and decree passed by the trial court in BCC Suit No. 5235 of

1993, directing handing over the possession of the suit flat No. 63, 6th Floor, Raj Mahal, Miya Mohd. Chootrani Road, Mahim, Bombay-16 shall remain stayed subject to condition that the applicant shall not part with the possession and or alienate the suit property till the disposal of the first appeal. The applicant/constituted attorney shall file such affidavit/undertaking in usual form in this court within a period of two weeks. In case of failure on the part of the applicant to file affidavit/undertaking within a period of two weeks as noted above, interim relief granted by this court shall stand vacated without further reference to this court.

7. The hearing of the First Appeal No. 1389 of 2006 is expedited. The registry is directed

to list First Appeal no. 1389 for final hearing in the second week of January, 2007. Liberty in favour of the parties to move this court in case, the matter is not listed for final hearing.

8. Civil Application is accordingly allowed in above terms and disposed off.

sd/-

(JUDGE)